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Richard A. Brown
District Attorney

December 20, 2018

MuckRock News
Attn: Michelle Malkin
DEPT MR 64231
411A Highland Avenue
Somerville, MA 02144-2516

Re: Freedom of Information Law Request
People v. Chanel Lewis
Queens County Ind. No. 667/17

Ms. Malkin:

Your November 29, 2018 Freedom of Information Law (FOIL) request, seeking “[a]ny and all evidence items and exhibits introduced at trial” in the above-mentioned prosecution is denied.

Although the Public Officer’s Law creates a presumption of disclosure, it does not require an Agency to thwart its ability to perform its primary functions in order to provide access. In that vain, an agency may withhold documents which “are compiled for law enforcement purposes and which, if disclosed would . . . interfere with law enforcement investigations or judicial proceedings.” Pub. Off. Law § 87(2)(e)(i). This exception “is based on the risk that such disclosure would have a chilling effect on pending prosecution, would create a substantial likelihood of delay in a pending criminal proceeding, or would interfere with criminal discovery rules.” *New York Times Co. v. New York State Executive Chamber*, 57 Misc.3d 405 (Sup. Ct. Albany Co. 2017) (citing *Pitarri v. Pirro*, 258 A.D.2d 202 [2d Dept. 1999]). The “FOIL Interference Exemption protects all types of judicial proceedings [and] does not specify a particular type of judicial proceeding or any particular phase within a judicial proceeding.” *Asian American Legal Defense and Educ. Fund v. New York City Police Dept.*, 41 Misc.3d 471, 477 (Sup. Ct. New York Co. 2013). While an agency may not rely on a “speculative claim of potential interference” to invoke this exception, such withholding is appropriate when there was an impending proceeding “plainly contemplated in the near future.” *Madeiros v. New York State Educ. Dept.*, 30 N.Y.3d 67, 77 (2017).

Here, the materials requested – any and all evidence items and exhibits introduced at this criminal trial – were obviously compiled for “law enforcement purposes,” thereby satisfying the first criteria of the exception listed in section 87(2)(e)(i). The second criteria is met because responding to your FOIL request would interfere with an upcoming judicial proceeding – the re-trial. As I am sure you are aware, a mistrial was recently declared at a trial on this matter and, as this Office publically stated, it intends to re-try this matter. Presently, then, this Office is preparing for a re-trial during which the same evidence will be utilized. In order to adequately prepare for the re-trial, the trial prosecutors need unencumbered access to the files and all the evidence in this matter. But this

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access would be blocked completely should the FOIL Unit even attempt to respond to your request as it would have to take possession of the file on this matter in order to locate all the relevant evidence and to analyze this evidence for disclosure under FOIL. Clearly, taking possession of the file would impede the trial prosecutor's ability to prepare for the re-trial and, as such, fulfilling your FOIL request, will interfere with this Agency's ability to prepare for the re-trial, which clearly constitutes a judicial proceeding.

Thus, because your FOIL request pertains to materials which were compiled for law enforcement purposes, and attempting to disclose this material would interfere with a pending judicial proceeding, your request is denied.

Within thirty days of this letter, you have the right to appeal this determination to Executive Assistant District Attorney John M. Castellano, the FOIL Appeals Officer, Office of the District Attorney of Queens County, 125-01 Queens Boulevard, Kew Gardens, New York 11415.

Regards,

/s/

Anastasia Spanakos
Assistant District Attorney
Records Access Officer

AS/jky